Gazette No. 32 dated 7th August 1956.
PART I

Labour Department

NOTIFICATION.

L. Dis. 17791/56/DD. Dated, Trivandrum, 3.

The award of the Industrial Tribunal, Trivand pect of the dispute between Messrs. Parkins Ltd Agents for Talliar Tea Co. Ltd., Kottayam, repr Talliar Estate and their workmen represented by Secretary of the Estate Staffs Union of South India. Branch) Munnar received by Government on 20-7-1, published under Section 17 of the Industrial Disput ntral Act XIV of 1947).

By order of H
the Raj Pr
V. V. Jo
Industries S

Before

SRI K. PURUSHOTHAMAN NAIR, B. A., B. L.,
Industrial Tribunal, Trivandrum.

ADJUDICATION No. 40 of 1954.

Between

MESSRS. PARKINS LTD.
Managing Agents for Talliar Tea Co. Ltd., Kottayai
representing the Talliar Estate.

And

THEIR WORKMEN

Represented by

THE REGIONAL SECRETARY OF THE ESTATE STAFFS UNION OF SOUTH INDIA (HIGH RANGE BRANCH) MUNNAR.

epresentations:

1. Sri K. V. R. Shenoi
2. Sri G. B. Pai and
3. Sri P. Govindan Nair

} Advocates for the employer.

4. Sri Rajagopal, Regional Secretary of the Union for tl workers.

AWARD

is a reference by the Government under Sect ndustrial Disputes Act for adjudication to t dustrial dispute between Messrs. Parkin nts for Talliar Tea Co. Ltd., Kottayam r state and their workmen represented y of the Estate Staffs Union of Sou Munnar in respect of the matte
... if any ...

...n summons being issued to the parties they put ...ance, filed their respective statements and when ...e up for evidence the parties settled the dispute and presented before this court a com... Regional Secretary for the Staffs of Talliar E... ...ging Agents and their advocate. A petition da... ...5 signed by the staff members had already been fi... workmen have stated that as per an agreement between the parties they have received extra bonus proceedings in the dispute be dropped. The com... this effect.

...ties to the above dispute have settled the issue of ...e to staff of the Talliar Estate for 1953-54 as follows:

Management has paid 1½ months' basic salary ...e year 1953-54 to the staff of Talliar Estate ove... has already been paid as bonus for that year.

...staff members have accepted the above payme... ...al satisfaction of their demand for bonus for the y...

...he payment made above is without prejudice to ...e con... the management that bonus is payable only if there are profits" and that this settlement will not form a prece...

...view of the above it is humbly prayed that the Tribunal ...e pleased to accept this settlement and pass an award ...dingly and in terms of the settlement."

...cept the terms of the compromise and find that there is ...o ...pute subsisting between the parties. I pass an award ...c... ingly. This award will come into force from the date of ...ublication in the Gazette.

Trivandrum,
18-7-1956.

K. Purushothaman Nair,
Industrial Tribunal.

Labour Department

NOTIFICATION.

No. L. Dis. 17793/56/DD. *Dated, Trivandrum, 31st July 1956.*

T... the Industrial Tribunal, Trivandrum in respect of the dispute between Partner, A. N. Guna Shenoy and Brothers, Cochin-2 and their workmen represented by the Cochin Employees Association, Mattancherry, Cochin-2, received by Government on 20-7-1956 is hereby published under Section 17 of the Industrial Disputes Act 1947 (Central Act XIV of 1947).

By order of His Highness
the Raj Pramukh,
V. V. Joseph,
Industries Secretary.

(Ce...

Before

Sri K. Purushothaman Nair, B. A., B. L.,
Industrial Tribunal, Trivandrum.

INDUSTRIAL DISPUTE No. 219/1955.

Between

...ARTNER, A. N. GUNA SHENOY AND BROTHERS, COCHIN—2.

And

THE WORKMEN OF THE ABOVE CONCERN

represented by

The Cochin Employees Association,
Mattancherry, Cochin-2.

AWARD

...overnment have by order L. 4-24700/55/DD. dated ...eferred under Section 10 (i) c of the Industrial Dis... to this Tribunal for adjudication the industrial dispute ...artner, A. N. Guna Shenoy and brothers Cochin-2, and ...men of the concern represented by the Cochin ... Association, Mattancherry Cochin-2, in respect of the ...ntioned below:

...should be the grades of pay and allowances for the ...egories of employees of the concern?

...r the employees are entitled to bonus for the years ... if so, what should be its quantum for each of

... Provident Fund Scheme be instituted for the ... concern and if so what should be the rate of ...e employers?

...employees are entitled to free medical aid?

...ratuity that should be paid on death, retire... ...ployees?

6. Should festival holidays with pay be granted to the employees and if so what should be the number of such holidays in any year?

The parties in pursuance of summons, issued from this Tribunal appeared and put in their statements and on 13-7-1956 when the case stood posted for evidence they filed a memorandum of settlement and also an application praying that an award be passed in terms of the provisions embodied in the memorandum of settlement. Both the petition and the memorandum of settlement have been signed by the representatives of the employees association and the management. The secretary of the Cochin Employees Association who was present in court was examined to prove the memorandum of settlement. The Memorandum of Settlement is marked as Exhibit A and the terms are as under:

"Memorandum of Settlement arrived at between Mess. A. N. Guna Shenoy and Brothers, Hardware Merchants, Mattancherry, Cochin-2, and their employees represented by th Cochin Employees Association, Mattancherry, Cochin-2.

1. The above dispute has been settled out of court on th terms and conditions mentioned below:

2. In consideration of the increments, bonus and other bene conferred under the settlement, the employees have agreed give up all other demands.

Terms of Settlement.

1. SALARY AND DEARNESS ALLOWANCES.

Senior Assistants.		
	Salary scales	Rs. 60-5 Rs. 160
	Dearness Allowance	Rs. 30
Senior Clerks (*Special grade*)		
	Salary scales	Rs. 50-3-Rs. 110
	Dearness allowance	Rs. 25
Clerks.		
	Salary scales	Rs. 40-3-Rs. 110
	Dearness allowance	Rs. 25
Attender-cum-clerk.		
	Salary scales	Rs. 30-2½-Rs. 80
	Dearness allowance	Rs. 25
Shop Assistants.		
'A' Group.		
	Salary scales	Rs. 30-3-Rs. 90
	Dearness allowance	Rs. 25
'B' Group.		
	Salary scales	Rs. 30-2-Rs. 70
	Dearness allowance	Rs. 15
Drivers		
	Salary scales	Rs. 40-1½-Rs. 70
	Dearness allowance	Rs. 25
Watchmen.		
	Salary scales	Rs. 25-1-Rs. 45
	Dearness allowance	Rs. 15

...e is ...ward ...te of ...AIR ...il.

2. BONUS.

...shall be given a ...or

...ust 1956.

...epartment

...FICATION.

Dated, Trivandrum, 26th July 1956.

...ntral Government Industrial Tribunal, ...23 of the Industrial Disputes (Appellate ...n respect of dispute between Sri K. V. ...er, Power Agent, Cape Comorin Traffic Co., ...am and their workmen represented by the All ... Factory Workers Union, Thamarakulam receiv... ...nent on 8-7-1956 is hereby published under Sec... ...e Industrial Disputes Act 1947 (Central Act XIV of

By order of His Highness
the Raj Pramukh,
V. V. JOSEPH,
Industries Secretary.

Before

SHRI K. N. KUNJUKRISHNA PILLAI, B. A., B. L.,
Chairman, Central Government
Industrial Tribunal, Madras.

APPLICATION No. MADR. 52 OF 1956.

...Perumal, Member and Joint Secretary, All Travancore Salt Factory Workers' Union, Thamarakulam .. *Applicant.*

Versus

... V. Sivaramakrishna Iyer, Power Agent ...ape Comorin Traffic Co., Ltd., Thamara...kulam .. *Opponent.*

...e matter of an application under Section 23 of the ...ustrial Disputes (Appellate Tribunal) Act, 1950.

...P: TRIVANDRUM, DATED THE 22ND JUNE 1956.

Shri K. N. Kunjukrishna Pillai, Chairman.

...licant .. Shri M. Prabhakaran, Advocate, Trivandrum.

...nt .. Shri S. Ramalingom Iyer, Director, S. S. Allom (Private) Ltd.

.. Travancore-Cochin.

.. Salt.

...WARD.

...23 of the Industrial Disputes ...filed by Shri Perumal on ...hna Iyer, Power ...akulam and it ... Objection

was filed Shri K. V. Sivaramaki...
alleged by the applicant Shri Peru...
ployment by Sri K. V. Sivaramakr...
tioned as opponent hereinafter) from...
sion of the Labour Appellate Tribuna...
1956 was pending. It is further alleged...
refusing to give him employment was attra...
of Section 22 of the Act and hence the...
reinstatement with back wages.

2. The opponent has filed objection by say... tion is unsustainable because he was no more in... ment of the Cape Comorin Traffic Co., Ltd., and... violated the provisions of the Act and on the applica... applicant filed on 15-6-1956, I issued notice to the ma... of the Cape Comorin Traffic Co., Ltd., and the latter h... objection on 21-6-1956. I have heard the arguments... representatives of the parties.

3. Appeal No. 23 of 1956 was pending before the ... Appellate Tribunal on the date of alleged termination... services of the applicant. It is admitted that Shri K. V... ramakrishna Iyer, Power Agent of Shri Sankara Allo... (lessee, Cape Comorin Traffic Co., Ltd.,) was the appell... All Travancore Salt Factories Workers' Union, Puthalam... coil represented by the employees of the said Allom a... workmen in the said Cape Comorin General Traffic ... Thamarakulam who are not members of the responde... are parties in the Appeal. It is also admitted that S... Sivaramakrishna Iyer, Power Agent of Shri Sank... was only a lessee of the Cape Comorin General Tr... Ltd., which owns one allom in which the applicant was ... and from which his services were terminated on 1... There is no doubt that Shri K. V. Sivaramakrishna ... nothing to do with the management of the Allom at... when the applicant was discharged. The leave in... Shri K. V. Sivaramakrishna Iyer terminated long... year 1956.

4. To invoke the aid of Section 23 of the Ac... should have contravened the provisions of Se... necessary that the employer should be a par... pending or during the period of thirty days a... of the appeal. It cannot be said that the e... party to the dispute against whom the app... within the ambit of the word 'employer'... 22 of the Act. It is clear that the m... Comorin General Traffic Co., Ltd., is... Sivaramakrishna Iyer at the time of... there is no contravention of the... applicant may or may not raise... ment of Cape Como... the services bu... Section 23 so lo... Traffic Co...

Labour Department

NOTIFICATION

L. Dis. 16904/56/DD. Dated, Trivandrum, 30th July 1956.

The award of the Central Government Industrial Tribunal, Madras under Section 2 in respect of the dispute between Messrs. The Cochin Nayar Bank Ltd., Trichur and their workmen represented by the Trichur Bank Employees' Association, Trichur under Se tion 25 E clauses (b) and (c) of the Act received by Gover nt on 8-7-1956 is hereby published under Section 17 of th al Disputes Act 1947 (Central Act XIV of 1947).

By order of His Highness
the Raj Pramukh,

V. V. Joseph,
Industries Secretary.

Shri

Before

Shri K. N. Kunjukrishna Pillai, B. A., B. L.,
rman, *Central Government Industrial Tribunal, Madras.*

Sri K
C

APPLICATION No. MADR. C-18 OF 1954.

The General Secretary, The Trichur Bank Employees' Association, Trichur — *Applicant.*

versus

The Cochin Nayar Bank Ltd., Trichur — *Opponent.*

In the matter of an application under Section 25E, clauses (b) & (c) of the Industrial Disputes Act, 1947.

Camp: Ernakulam, Dated 19th June 1956.

Present:

55 r
ct 1
P

Shri K. N. Kunjukrishna Pillai,
Chairman.

pearances:

For the applicant ..	No appearance.
For the opponent ..	No appearance.
tate ..	Travancore-Cochin.
..	Banking.

Bank Employees'
1954 com g
loy e

14 employees should be reinstated. Along with the application, no affidavit was filed and the application does not conform to the proper form namely 'E' as prescribed under the Industrial Disputes (Appellate Tribunal) Rules, 1951. Further, even though there is prayer for reinstatement, it is not sure whether it is an application under Section 23 of the Act. Even if it is construed as an application under Section 23, the signatory of the application is the General Secretary of the Union. Admittedly, the aggrieved party is not the General Secretary. There is no authorisation by the aggrieved employees, authorising the General Secretary to file the application.

3. Hence the application is illegal, irregular and it is surprising to note that this was pending for a long time. Hence I dismiss the application.

4. I pass this award accordingly and this will be publish in the Gazette according to Section 17 of the Industrial Dispu Act, 1947.

K. N. Kunjukrishna Pillai
Chairman.

...lary drawn by the individual employees in 1130 M. E. in full settlement of the demand for bonus from 1125 to 1130 (both inclusive) over and above what they have already received, and those who have joined service after 1125 M. E. shall be given a bonus equal to one month's basic salary drawn in 1130 for each year of service.

3. Fitting into Service.

(a) All employees shall be given the above mentioned increments in their salary calculated from the beginning of their services under the above management.

(b) A table showing the group, service, allowance and bonus of each of the employees working in this concern at present, is given hereunder to elucidate the actual amount to be received by him as on 1-1-1131 M. E. as per the terms mentioned herein above.

...e and Designation.	Service.	Salary. Rs.	D. A. Rs.	Bonus Rs.	Remarks.
...or Assistants.					
M. Lakshmana Kamath	15 yrs.	135	30	600	
K. V. Viswanatha Shenoy	13 yrs.	125	30	600	
...nior Clerks (Special grade)					
A. B. Padmanabha Prabhu	34 yrs.	110	25	600	
S. Vittappa Shenoy	23 "	110	25	600	
...rks.					
K. Kuttan Menon,	9 "	67	25	330	
T. R. Vamana Mallan	8 "	64	25	270	
G. G. Damodaran	7 "	61	25	240	
P. B. Raman Menon	4 "	52	25	160	
...p Assistants.					
'A' Group.					
... Krishna Pai	15 "	75	25	300	
... Krishna Naicken	8 "	60	25	240	(2 increments extra given)
...R. Padmanabha Kamath	15 "	75	25	360	
'B' Group.					
...vara Ouseph	18 "	70	15	300	(2 increments extra given)
...K. Augustin	16 "	62	15	210	
...I. A. Chandy	9 "	48	15	180	
... Baba Kamath	9 "	48	15	180	
... Ramachandry Vadhyan	7 "	44	15	195	
... Mani	6 "	42	15	180	(1 increment extra given)
... Ranganatha Mallan	2 "	36	15	60	
... Govinda Menon	8 "	52	25	210	
... G. Gopala Pillay	2 "	43	25	70	

10 Wn...

Watchmen.					
21 Kurian Varkey	2 yrs.	27	15	40	
22 Vareeth Vareeth	20 ,,	45	15	180	
Attender-cum-Clerk.					
23 R. Madhava Pai	6 ,,	45	25	55	
24 M. Ayyappa Menon	2 ,,	37½	25	70	(1 increment extra given)

(c) Future increments shall be drawn by each employee until he reaches his maximum and completes 20 years of total aggregate services without break.

(d) Salaries of those who have attained the maximum in their respective group will remain static for the purp[illegible] this agreement.

(e) Regular increment of the eligible employee w[illegible] mence from 1131 M. E. onwards. [illegible]alf

(f) The arrears of salary and dearness allowance a[illegible] [illegible]ve shall be paid within the course of two months from th[illegible] [illegible]ge this settlement. [illegible]of

(g) Over and above the salary and allowan[illegible] [illegible]o Vittappa Shenoy, shall be given an extra allowance of Rs.[illegible] month.

(h) A sum of Rs. 10 per month shall be deducted from total emoluments drawn by Sri. Vareeth Vareeth in view of t[illegible] extra ameneties he enjoys by way of free food etc.

4. Gratuity.

All employees who met with death when in service or w[illegible] are hereafter discharged from service by retirement or retrenc[illegible] ment shall be given gratuity calculated at twenty-one days' p[illegible] for every year of completed service, subject to a maximum [illegible] twenty months' pay. For the purpose of this clause, 'p[illegible] includes dearness allowance and the basis of calculation will [illegible] the average pay drawn during the last 12 months of service.

5. Retiring Age.

Every employee will be retired at the age of 55 but [illegible] management will have the option to extend the period [illegible] service further.

6. Retrospective Effect.

The increments in salary and dearness allowance refer[illegible] to above will have retrospective effect from 1-1-1131."

I accept the above terms and find that there is no sub[illegible] ing industrial dispute between the parties. I pass the aw[illegible] accordingly in terms of the compromise. This award will c[illegible] into force from the date of publication in the Gazette.

Trivandrum,
18-7-1956.

K. Purushothaman [illegible]
Industrial Tribun[illegible]

Gazette No. 32 dated 7th August 1956.
PART I

Labour Department

NOTIFICATION

L. Dis. 17795/56/DD. *Dated, Trivandrum 31st July 1956.*

The award of the Industrial Tribunal, Trivandrum under Section 33A of the Industrial Disputes Act in respect of the dispute between M/s. A. N. Guna Shenoy & Bros., Cochin-2 and their workman Sri Kurian Varkey received by Government on 20-7-1956 is hereby published under Section 17 of the Industrial Disputes Act 1947 (Central Act XIV of 1947).

By order of His Highness
the Raj Pramukh,
V. V. JOSEPH,
Industries Secretary.

Before

SRI K. PURUSHOTHAMAN NAIR, B. A., B. L.,
Industrial Tribunal, Trivandrum

INDUSTRIAL DISPUTE No. 18 OF 1956

Between

SRI KURIAN VARKEY,
of Messrs. A. N. Guna Shenoy & Bros., Cochin-2

And

MESSRS. A. N. GUNA SHENOY & BROS.,
Cochin-2.

AWARD

This is a complaint under Section 33-A of the Industrial Disputes Act preferred by Sri Kurian Varkey, a workman of Messrs. A. N. Guna Shenoy & Bros. The complaint is that the opposite party refused to pay the second instalment of his salary and allowance on the last date of the month of Vrischigom 1131 in contravention of the usual practice. According to the complainant this is an alteration of the conditions of service and the opposite party having so altered the conditions of service during the pendency of Industrial Dispute No. 219 of 1955 (referred to by Government in their order L. 4-24700|55|DD. dated 7-12-1955), in which he also is concerned, without the permission of this Tribunal, the action of the opposite party amoun[illegible] a violation of Section 33 of the Act. The opposite party h[illegible] objection denying the allegations made by the complai[illegible] When the case came up for evidence on 14-7-1956 the [illegible]nant submitted a statement wherein he has stated [illegible] matter in dispute has been settled out of court and th[illegible]aint be dismissed. I accept the statement and find th[illegible] is no industrial dispute subsisting between the part[illegible]warded accordingly. This award will take effect from [illegible] of publication in the gazette.

K. PU[illegible]SHOTHAMAN NAIR,
Industrial Tribunal.

Trivandrum,
18-7-1956.

G. 2932

Gazette No. 32 dated 7th August 1956.

PART I

Labour Department

NOTIFICATION.

L. Dis. 17796/56/DD. *Dated, Trivandrum, 1st August 1956.*

The award of the Industrial Tribunal, Trivandrum under Section 33 A of the Industrial Disputes Act in respect of the dispute between M/s. A. N. Guna Shenoy and Bros., Cochin 2 and their workman Sri K. R. Padmanabha Kamath received by Government on 20-7-1956 is hereby published under Section 17 of the Industrial Disputes Act 1947 (Central Act XIV of 1947).

By order of His Highness
the Raj Pramukh,
V. V. JOSEPH,
Industries Secretary.

Before

SRI K. PURUSHOTHAMAN NAIR, B. A., B. L.,
Industrial Tribunal, Trivandrum.

INDUSTRIAL DISPUTE No. 19/1956.

Between

SRI K. R. PADMANABHA KAMATH,
of Messrs, A. N. Guna Shenoy and Bros., Cochin-2.

And

MESSRS. A. N. GUNA SHENOY & BROS.,
Cochin-2.

AWARD.

This is a complaint under Section 33-A of the Industrial Disputes Act preferred by Sri K. R. Padmanabha Kamath, a workman of Messrs. A. N. Guna Shenoy and Bros. The complaint is that the opposite party refused to pay the sceond instalment of his salary and allowance on the last date of the month of Vrischigom 1131 in contravention of the usual practice. According to the complainant this is an alteration of the conditions of service and the opposite party having so altered the conditions of service during the pendency of Industrial Dispute No. 219 of 1955 (referred by Government in their order L. 4-24700/55/DD. dated 7-12-1955) in which he also is concerned, without the permission of this Tribunal, the action of the opposite party amounts to a violation of Section 33 of the Act. The opposite party has filed objections denying the allegations made by the complainant. When the case came up for evidence on 14-7-1956 the complainant submitted a statement wherein he has stated that the matter in dispute has been settled out of court and this complaint be dismissed. I accept the statement and find that there is no industrial dispute subsisting between the parties. Awarded accordingly. This award will take effect from the date of publication in the Gazette.

K. PURUSHOTHAMAN NAIR,
Industrial Tribunal.

Trivandrum,
7-1956.

Labour Department

NOTIFICATION.

No. L. Dis. 17792/56/DD. *Dated, Trivandrum, 1st August 1956.*

The award of the Industrial Tribunal, Trivandrum in respect of the dispute between the Managing Director The Cochin Malleables Ltd., Aranattukara, Trichur and their workmen represented by the Cochin Malleables Workers Union, Aranattukara, Trichur received by Government on 20-7-1956 is hereby published under Section 17 of the Industrial Disputes Act 1947 (Central Act XIV of 1947).

By order of His Highness
the Raj Pramukh,
V. V. JOSEPH,
Industries Secretary.

Before

SRI K. PURUSHOTHAMAN NAIR, B. A., B. L.,
Industrial Tribunal, Trivandrum.

INDUSTRIAL DISPUTE No. 46 of 1955

Between

THE MANAGING DIRECTOR,
The Cochin Malleables Ltd., Aranattukara, Trichur

And

THE WORKMEN

Represented by

THE COCHIN MALLEABLES WORKERS UNION,
ARANATTUKARA, TRICHUR.

Representations:

1. Sri P. Sankara Menon, Advocate, Trichur for the employer.
2. Sri K. K. Vasu Panicker, Advocate, Trichur for the workers.

AWARD.

Government have by order L. 4-5156/55/DD., dated 18-3-1955 referred for adjudication to this Tribunal the industrial dispute between the Managing Director, The Cochin Malleables Ltd., Aranattukara, Trichur and their workmen represented by the Cochin Malleables Workers Union, Aranattukara, Trichur, in respect of the matters given hereunder.

1. What revision should be made in the wages of the several categories of the workers?
2. To what bonus, if any, are the workmen entitled for the period 1952-53 and 1953-54?
3. To what festival holidays with wages are ... e ...ntitled to annually?
4. Should all workmen with 6 months se... ...rmanent?
5. What amount of casual leave and sick leav... ...n entitled to annually? And should wages be... ...ve?

6. Should a dispensary be provided in the factory for the workmen?

7. Should the workmen be provided with free uniforms?

8. Should a special allowance be paid to workers for casting work?

9. Should the workmen be given a tea allowance as is given to the staff members?

10. Should the workmen be paid a special night allowance.

In response to the summons issued to the parties, they put in their appearance and filed statements. The case was then posted for evidence and one witness was examined on the side of the workers. When the case stood posted for further evidence on 13-7-1956 a compromise petition signed by both the parties and their advocates was filed in Court. They also prayed that the compromise be accepted and an award passed in terms thereof. The parties have settled the matters referred for adjudication thus:

"Joint statement submitted by V. K. U. Menon on behalf of the management and K. A. Kuttappan, Secretary of the above union on behalf of the union.

I. *Revision in wages.* It is agreed that the minimum wage of a worker in the factory be fixed at Rs. 1-8-0. The salary for those workers who draw less than Rs. 1-8-0 will be raised to Rs. 1-8-0 per day.

(b) The wages will be revised as follows:—

All those who draw Re. 1-0-0 to Rs. 1-8-0 will be given an increase of	As. 8.
All those who draw Rs. 1-9-0 to Rs. 2-0-0 will be given an increase of	As. 6
All those who draw Rs. 2-1-0 to Rs. 3-0-0 will be given an increase of	As. 4
All those who draw above three rupees will be given an increase of	As. 2

(c) The above revision is subject to the condition that the workers in the malleable moulding section guarantee an increase of 25% more out turn than what they have been on various items hitherto. The workers in other depa[illegible] assure the management to give a better out turn. The [illegible] also agree that the management is at liberty to make [illegible] tionate reduction in the wages, if the guaranteed mi[illegible] not given. This is subject to the exception that th[illegible] production is not due to causes beyond the contr[illegible] workers such as non-supply of materials in time, [illegible] melting or defect in analysis of melting etc.

(d) The revision agreed to is to take effect from [illegible] 1956.

II. *Ho[illegible]s.* It is agreed that the following d[illegible] declared as fe[illegible]al holidays with wages.

1.	Onam	Two days
2.	Puja	One day
3.	[illegible]ristmas	One day
4.	[illegible]gust 15th	One day

Labour Department

NOTIFICATION.

No. L. Dis. 17794/56/DD. *Dated, Trivandrum, 3rd August 1956.*

The award of the Industrial Tribunal, Trivandrum under Section 33 A of the Industrial Disputes Act in respect of the dispute between Messrs. A. N. Guna Shenoy & Bros. Cochin-2 and their workmen Messrs. S. Vittappa Shenoy, M. Lakshmana Kamath, K. R. Padmanabha Kamath, R. Krishna Pai, N. Krishna Naickan, N. Ranganatha Mallan, T. R. Vamana Mallan, R. Baba Kamath, M. A. Chandy, A. K. Augstin and Kurian Varkey, received by Government on 20-7-1956 is hereby published under Section 17 of the Industrial Disputes Act, 1947 (Central Act IV of 1947).

By order of His Highness
the Raj Pramukh,
V. V. Joseph,
Industries Secretary.

Before

Sri K. Purushothaman Nair, B. A., B. L.,
Industrial Tribunal, Trivandrum.

INDUSTRIAL DISPUTE No. 11/1956

Between

Messrs. S. Vittappa Shenoy, M. Lakshmana Kamath, K. R. Padmanabha Kamath, R. Krishna Pai, N. Krishna Naickan, N. Ranganatha Mallan, T. R. Vamana Mallan, R. Baba Kamath, M. A. Chandy, A. K. Augstin and Kurian Varkey, workers of Messrs. A. N. Guna Shenoy & Bros. Cochin-2

And

Messrs. A. N. Guna Shenoy & Bros. Cochin-2.

AWARD.

This is a complaint under Section 33-A of the I
isputes Act preferred by Sri S. Vittappa Shenoy
umbering 11 workmen in the employment of Mes
henoy and Bros. against the latter. The case
nts is that the management used to pay the
r certain utsavams and such advances ha

and conditions of their service and the management unlawfully refused to pay such advances in connection with the Cochin T. D. Ulsavam and X-mas. The action of the management amounts to an alteration of the conditions of services and since the same being done during the pendency of I. D. 219 of 1955 between the same parties is a contravention of Section 33 of the Act. The management denied the above allegations in their objection statement and when the matter came up for evidence, the complainants filed in Court a signed statement to the effect that the parties have settled the subject matter of the dispute out of court and that this complaint be dismissed. I accept the statement and find that no industrial dispute subsists between the parties and pass an award accordingly. This award will come into force from the date of publication in the Gazette.

K. PURUSHOTHAMAN NAIR,
Industrial Tribunal.

Trivandrum,
18-7-1956.

Gazette No. 32 dated 7th August 1956.
PART I

Labour Department

NOTIFICATION

No. L. Dis. 19080/56/DD. *Dated, Trivandrum, 31st July 1956.*

The award of the Industrial Tribunal, Alleppey in respect of the dispute between Sri S. Padmanabhan, S. P. Coir Works, Vayalar, Shertallai and his workmen represented by the Shertallai Coir Factory Workers' Union, Shertallai received by Government on 25-7-1956 is hereby published under Section 17 of the Industrial Disputes Act 1947 (Central Act XIV of 1947).

By order of His Highness
the Raj Pramukh,
V. V. JOSEPH,
Industries Secretary.

Before the Industrial Tribunal, Alleppey.

Present:

SRI K. SHAHUL HAMEED

In

INDUSTRIAL DISPUTE No. 69 / 1956]

Between

SRI S. PADMANABHAN,
S. P. COIR WORKS, VAYALAR, SHERTALLAI

And

HIS WORKMEN

Represented by

THE SHERTALLAI COIR FACTORY WORKERS' UNION,
SHERTALLAI

Representation:—

1. Sri S. Padmanabhan, S. P. Coir Works, Vayalar, Shertallai — *Employer.*
2. Sri C. S. Ramakrishnan, General Secretary, Shertallai Coir Factory Workers' Union, Pattanakad — *For Employees.*

AWARD.

This dispute was pending adjudication before the Trivandrum Tribunal as I. D. 80/54. After the constitution of the Industrial Tribunal, Alleppey, the Government by their order L4.24913/54/DD. dated 30-5-1956 recalled and re-referred this dispute for adjudication to this Tribunal. The points of dispute between the parties as mentioned in the Annexur[illegible] the order of reference are as follows:— [illegible] mentioned

1. Whether the refusal of work to the W[illegible] [illegible]hat reliefs below from 4-10-1954 is justifiable? If nc[illegible] are they entitled?

G. 2931

(1) Sri Kochuparambil Kumaran
(2) Sri Kalarickal Gangadharan
(3) Sri Polakulangara Raghavan
(4) Sri Kochuveliyil Karunakaran
(5) Sri Polakulangara Thankappan
(6) Sri Palloorathil Sreedharan
(7) Sri Kattezhath Appachan
(8) Sri Kochuthara Damodaran
(9) Sri Parappel Narayanan.

2. Whether the workmen mentioned in issue No. 1 are entitled to get any arrears of wages for the work done from 24-9-1954 to 3-10-1954 and if so to what extent ?

3. Whether workmen mentioned in issue No. 1 are entitled to any wages in lieu of unavailed portion of leave for the years 1953 and 1954, if any and if so, to what extent ?

4. Whether any or all of the workers have to get any balance wages in respect of weaving Vykom 2 shaft special tile mattings from July 1954 ? If so, who are all the workers entitled and what is the amount due to each workman ?

5. Whether the workmen mentioned in issue No. 1 are entitled to any bonus from 1st January 1954 and if so at what rate ?

In pursuance to the Government order referred to above, I have registered this dispute as I. D. No. 69/56 and issued summons to parties. The parties appeared on 21-6-1956. Both parties agreed by a joint statement signed by them to continue the dispute before this Tribunal from the stage where it was left at the previous Tribunal. The Union has filed their statement on 18-1-1955. The Employer had filed his counter statement on 27-1-1955. Both sides had filed their list of documents and schedule of witnesses also. The case was posted to 5-7-1956 for evidence. On that day both parties were heard at length regarding their points of view. It appeared to me that their differences were considerably narrowed down especially in view of the fact that six from among the workmen mentioned in issue No. 1 had already been taken back in work by the Employer and that they had filed separate petitions to the effect that they have no grievances now. Better counsels prevailed with the parties and they showed their willingness to settle the remaining issues as well. On the motion of parties, I adjourned the case to 20-7-1956 for evidence or compromise. But on 18-7-1956 the parties appeared before me and signed the memorandum of settlement drawn up by them in Court and signed it in my presence. The goodwill and spirit of compromise shown by the parties are very much appreciated. All the issues are referred to in the Settlement. The memorandum of settlement is appended [illegible]under as Annexure 'A'. The terms are accepted and I pass [illegible]ward in terms of the Settlement. The terms embodied [illegible]s 2, 3, 4 and 6 in Annexure 'A' will be implemented wit[illegible] from 23-7-1956. The reference is answered accordingly [illegible]e nature of this case I make no order as to costs.

5. Vishu
6. Republic day .. One day
7. Pooram .. One day
.. One day

III. *Confirmation.* All workers who have put in six months ervice or more on the date of the clarification statement i. e., 9th April 1955, will be confirmed.

IV. *Night allowance.* All those who work between 12 and A. M. be paid a night allowance of annas two. But this will ot apply to peons and watchmen.

V. *Uniforms.* Uniforms to be supplied to the following orkers:—

1. Workers who catch metal in doula straight from cupola.
2. Workers who close the opening of the cupola.
3. Welders.

Gloves to be provided for those who work in the galva-ng section and who handle acids.

VI. *Bonus.* It is agreed that one week's wages be given as s to all workers who have completed one year service as on uly 1954.

VII. The above terms are to be implemented forthwith.

VIII. The Union agrees to withdraw all other demands."

I accept the prayer in the joint petition and the terms of lement mentioned above and pass this award accordingly. s award shall take effect from the date of publication in the ette.

vandrum,
7-1956.

K. PURUSHOTHAMAN NAIR,
Industrial Tribunal.

Gazette No. 32 dated 7th August 1956.
PART I

Labour Department

NOTIFICATION.

L. Dis. 19068/56/DD. *Dated, Trivandrum, 31st July 1956.*

The award of the Industrial Tribunal, Alleppey in respect of the dispute between Sri K. Sukumaran, Contractor, T. S. No. 64, Chavadi, Shertallai and his workmen represented by the Shertallai Taluk Chethu Thozhilali Union, Shertallai received by Government on 25-7-1956 is hereby published under Section 17 of the Industrial Disputes Act 1947 (Central Act XIV of 1947).

By order of His Highness
the Raj Pramukh,
V. V. JOSEPH,
Industries Secretary.

Before the Industrial Tribunal, Alleppey.

Present:

SRI K. SHAHUL HAMEED

in

INDUSTRIAL DISPUTE No. 29/56

Between

SRI K. SUKUMARAN,
Contractor, T. S. No. 64, Chavadi, Shertallai

and

THE TAPPERS IN THE SHOP

Represented by

THE SHERTALLAI TALUK CHETHU THOZHILALI UNION,
SHERTALLAI.

Representation:—

Sri K. Sukumaran, Contractor, T. S. No. 64, Chavadi, Shertallai — *Employer.*

Sri V. K. Balakrishnan, General Secretary, The Shertallai Taluk Chethu Thozhilali Union, Shertallai — *For Employees.*

AWARD.

The Government by order L2-7939/56/DD. dated 2-5-1956 referred this dispute for adjudication to this Tribunal. The points of dispute between the parties as mentioned in the order of reference are these:—

(1) Whether the Contractor should pay any tree preparation charges to the tappers durin the current contract period 1955-56. [illegible] judicia-

(2) If so, who are all the tappers entitled fowere of the what is the amount due to each on bear other [illegible] by ty day to [illegible] d and [illegible]

The dispute was registered as Industrial Dispute No. 29/56 on the file of this Court and summons issued to parties. The parties appeared on 17-5-1956. The Union applied for time for filing their claim statement, which was allowed and the case was adjourned to 1-6-1956 and then to 7-6-1956. On that day the Union filed their claim statement and the case was again adjourned to 20-6-'56 for the counter-statement by the employer. On 20-6-'56 the employer applied for time and it was again posted to 4-7-1956. On 4-7-1956 both sides presented their case before Court and showed their willingness to come to a settlement. On their motion it was posted again to 20-7-1956 for compromise. On 20-7-1956 the parties appeared before court, drew up the memorandum of settlement and signed it in my presence. That memorandum is appended hereunder as Annexure 'A'. They also prayed that an award be passed in terms of the memorandum of settlement.

The terms are reasonable. I appreciate the spirit of conciliation evinced by both the parties. In the result the memorandum of settlement is accepted and this award passed accordingly. No order as to costs.

This award will come into operation from the date of publication in the Gazette under Section 17 of the Industrial Disputes Act 1947.

Alleppey,
21-7-1956.

K. SHAHUL HAMEED,
Industrial Tribunal.

ANNEXURE 'A'

ആലപ്പുഴ ഇൻഡസ്ട്രിയൽ ട്രൈബ്യൂണൽ കോടതി മുമ്പാകെ

I. D. 23/56.

ഒത്തുതീർപ്പ് ഉടമ്പടി.

കക്ഷികൾ—1. കെ. സുകുമാരൻ, Contractor,
T. S. No. 64, ചാവടി, ചേർത്തല.

2, ടി കക്ഷിയുടെ ഷാപ്പിൽ ജോലി ചെയ്യുന്ന തൊഴിലാളികൾക്കു വേണ്ടി വി. കെ. ബാലകൃഷ്ണൻ, ജനറൽസെക്രട്ടറി, ചേർത്തല താലൂക്ക് ചെത്തു തൊഴിലാളി യൂണിയൻ.

ടി നമ്പർ കേസിലെ തെക്കഫീസിനെപ്പറ്റി ഇരുകക്ഷികളും തമ്മിൽ സംസാരിച്ച് ഒത്തുതീർപ്പിൽ എത്തുകയും അതിൻപ്രകാരം തെക്കഫീസ് തന്നിട്ടുള്ളതുമാകുന്നു.

ടി തൊഴിലാളിഭാഗത്തുനിന്നും ഉന്നയിച്ചിരുന്ന മാതിരി ഒരു തെങ്ങിന് ഒന്നു രൂപാ പ്രകാരം തെക്കഫീസ് വാങ്ങി തർക്കം ഒത്തുതീർപ്പിലെത്തിയിരിക്കുന്നു.

ടി ഒത്തുതീർപ്പ് കോടതിയുടെ ദയവുണ്ടായി അംഗീകരിച്ച് അവാർഡ് പാസ്സാക്കണമെന്ന് അപേക്ഷിക്കുന്നു.

സുകുമാരൻ (Sd.)
K. ബാലകൃഷ്ണൻ (Sd.)

This award will come into operation from the date of its publication in the Official Gazette under Section 17 of the Industrial Disputes Act 1947.

Alleppey,
21-7-1956.

K. SHAHUL HAMEED,
Industrial Tribunal.

Annexure 'A'

BEFORE THE INDUSTRIAL TRIBUNAL, ALLEPPEY.

I. D. 69/56.

Joint petition submitted by S. Padmanabhan, Proprietor, The S. P. Coir Works, Vayalar, Pattanakad for the management and C. S. Ramakrishnan, General Secretary, The Shertallai Coir Factory Workers' Union, Pattanakad for the workmen.

The above dispute is compromised on the following terms between the parties.

1. റഫറൻസ് ഓർഡറിലെ അനുബന്ധം (1)ൽ ഉൾപ്പെട്ടതും ഇപ്പോൾ S. P. Coir വർക്ക്സിൽ ജോലിയില്ലാത്തവരുമായ 3. പോളക്കുളങ്ങര രാഘവൻ 4. കൊച്ചുവെളി കരുണാകരൻ 5. പോളക്കുളങ്ങര തങ്കപ്പൻ എന്നിവരെ അടുത്ത തൊഴിൽ ദിവസം മുതൽ ജോലിയിൽ തിരിയെ പ്രവേശിപ്പിക്കപ്പെടുക.

ടി റഫറൻസ് ഓർഡറിൽ പറയുന്ന 1. കൊച്ചുപറമ്പിൽ കുമാരൻ 2. കളരിക്കൽ ഗംഗാധരൻ 6. പള്ളത്തിൽ ശ്രീധരൻ 7. കാട്ടേഴത്ത് അപ്പച്ചൻ 8. കൊച്ചുതറ ദാമോദരൻ 9. പറപ്പേൽ നാരായണൻ എന്നിവർ ജോലിയിൽ പ്രവേശിക്കയും വിവരം ബഹുമാനപ്പെട്ട ട്രൈബ്യൂണലിനെ അറിയിച്ചിട്ടുള്ളതുമാണ്.

2. അനുബന്ധം (1)-ൽ ഉൾപ്പെട്ട തൊഴിലാളികൾക്ക് അവരുടെ 24-9-54 മുതൽ 4-10-54 വരെയുള്ള ജോലിയുടെ കൂലി (3, 4, 5 എന്ന വർക്ക്) തീർത്തു കൊടുക്കപ്പെടുക.

3. ഇരുപതു(20) പ്രവൃത്തി ദിവസങ്ങൾക്ക് ഒരു ദിവസം എന്ന കണക്കിന് ഇന്നു മുതൽ തൊഴിലാളികൾക്ക് ശമ്പളത്തോടുകൂടിയ അവധി അനുവദിക്കപ്പെടുക.

4. അനുബന്ധം അഞ്ചിൽപ്പെട്ട വൈക്കം രണ്ടുചവിട്ടു സ്പെഷ്യൽ കളംപായ് 4/4 കോടി 50 വാരയിൽ ഒരു റോളിന് 3 രൂപാ 3 അണ 3 പൈസാ (Ruling Rate) വീതം കൂലി കൊടുക്കപ്പെടുക.

5. 1954-ലെ ബോണസ്സിനെ സംബന്ധിച്ച് ചേർത്തല അസോഷ്യേറ്റഡ് കോട്ടേജ് ഇൻഡസ്ട്രീസ് ആൻഡ് ഷിപ്പേഴ്സ് യൂണിയനും ചേർത്തല കയർ ഫാക്ടറി വർക്കേഴ്സ് യൂണിയനും തമ്മിൽ നിശ്ചയിക്കുന്ന നിരക്കിലോ, അല്ലെങ്കിൽ ടി വർഷത്തിലെ ബോണസ്സിനെ സംബന്ധിച്ച് ബഹുമാനപ്പെട്ട ഇൻഡസ്ട്രിയൽ ട്രൈബ്യൂണൽ നിശ്ചയിക്കുന്ന നിരക്കിലോ തൊഴിലാളികൾക്ക് ടി ഇനത്തിൽ അഡ്വാൻസായി കൊടുക്കപ്പെട്ടിട്ടുള്ള തുക കഴിച്ചു ബാക്കിയുണ്ടെങ്കിൽ നിർദ്ദിഷ്ട തീയതിക്കുള്ളിൽ കൊടുക്കപ്പെടുക.

6. ഒന്നാം പാരായിൽ പറയപ്പെട്ടിരിക്കുന്ന 3, 4, 5 എന്നി തൊഴിലാളികളി ഓരോരുത്തർക്കും മുപ്പതു (30) രൂപാ വീതം (മൊത്തം 90) പണിമുടക്കുകാലത്തെ വേതനമായി നൽകുന്നതാണ്.

7. പാരാ, 2, 3, 4, 6 എന്നിവ 23–7–56-നുള്ളിൽ നടപ്പിലാക്കുന്നതാണ്.

Both parties agree that the dispute be settled on the above terms.

It is prayed that this Hon. Industrial Tribunal be pleased to pass an award in terms of the above compromise.

Dated 18th of July 1956.

S. Padmanabhan, (Sd.)
Proprietor, The S. P. Coir Works, Vayalar, Pattanakad.

C. S. Ramakrishnan, (Sd.)
General Secretary, The Shertallai Coir Factory Workers' Union, Pattanakad.

മേൽപറഞ്ഞിട്ടുള്ളതെല്ലാം സത്യവും ഞങ്ങൾ ഇരുകൂട്ടരും ഉത്തമ വിശ്വാസത്തോടുകൂടി ഈ രാജിഹർജി ബോധിപ്പിച്ചിട്ടുള്ളതുമാണ്.

S. Padmanabhan, (Sd.)
C. S. Ramakrishnan, (Sd.)

Labour Department

NOTIFICATION.

L. Dis. 19279/56/DD. *Dated, Trivandrum, 31st July 1956.*

The award of the Industrial Tribunal, Ernakulam in respect of the dispute between the Amalgamated Tea Estates Company Ltd., Malakipara and their workmen represented by the Kerala Union Plantation Workers Union, Malakipara received by Government on 27-7-1956 is hereby published under Section 17 of the Industrial Disputes Act 1947 (Central Act XIV of 1947).

By order of His Highness
the Raj Pramukh,

V. V. JOSEPH,
Industries Secretary.

Before

V. U. JOSEPH, B. A. & B. L.,
Industrial Tribunal, Ernakulam.

INDUSTRIAL DISPUTE No. 38/56

Between

THE AMALGAMATED TEA ESTATES COMPANY LIMITED, MALAKIPARA

And

THE SECRETARY, THE KERALA UNION PLANTATION WORKERS' UNION, MALAKIPARA.

Representation :—MENON AND PAI FOR MANAGEMENT.
Advocate P. BALAGANGADHARA MENON FOR THE UNION.

AWARD.

(1) The Government in their order G. P. L. Dis. 18691/54/DD. dated 15-5-1956 referred the above dispute for adjudication to this Tribunal. This was originally referred to the Trivandrum Industrial Tribunal for adjudication and the evidence of both parties was closed during the pendency of this dispute before that Tribunal and arguments alone were to be heard. The parties did not want any de novo trial in this matter. They desired this Tribunal to pass the award after hearing the arguments. The issues as per schedule to the order of reference are :—

(1) Is the dismissal of Ponnuswami, Israel, Yesudhas, Massilamony, Kumaraswami, Pachinathan and Muthiah justifiable ?

(2) If not, to what relief are they entitled ?

(2) The case of the Union is that the workmen [illegible] judicial in this matter were dismissed without any ju[illegible]were of the The dismissals were effected without any enquiry [illegible] other ployees were not given any opportunity to defend [illegible] day to prove their innocence. The employees concerned and [illegible]

made a representation to the manager regarding the employment of one Govindan Nair, the founder of the Labour Union. The Manager disapproved their conduct and dismissed all the seven workmen arbitrarily. This is an act of victimisation on the part of the Manager. All the workers have to be reinstated with back wages.

(3) In the reply statement of the management it is contended that the workmen were dismissed for riotous and disorderly behaviour during the working hours at the establishment, in that the workmen concerned at about 8-30 A. M. on the 14th May, 1952 surrounded the Manager, obstructed, threatened and tried to restrain him by force, which are acts of misconduct under standing orders applicable to workmen. They were charge-sheeted and a regular enquiry was conducted and the charges were found true and the workmen were dismissed.

(4) The origin of the dispute is the transfer of one Govindan Nair from the factory work to the field work. In the estate all the workers live together in their respective quarters. Mr. Govindan Nair's wife Ammini was in an advanced stage of tuberculosis. The estate Medical Officer advised the manager to remove Ammini to prevent the source of infection and accordingly the manager ordered transfer. A deputation of four workers led by Mr. Israel met the Manager on the 7th of May, 1952 and requested him to retransfer Govindan Nair from the field to the estate but was of no avail. The leader of the deputation Mr. Israel at the end of the interview warned the manager that they would not be responsible for what happens afterwards. The Manager had occasion to meet Govindan Nair on the 13th of May, 1952, the day previous to the incident. Neither Mr. Govindan Nair nor the members of the deputation were satisfied with what was told by the Manager. As the Management did not transfer Govindan Nair from the field work to the factory feelings ran high and as a result the alleged incident which gave rise to this dispute occurred at 8-30 A. M. on the 14th May, 1952. The incident gave rise to a criminal case and a prosecution was launched against all the seven workers and all of them were arrested on the 19th May.. But the criminal case was withdrawn by Government after the charges were framed and all the accused were acquitted and Ex. IX is the order of acquital. According to the Manager enquiry was started on the 19th of May, 1952 and completed on the 12th June, 1952 and the records of enquiry proceedings are Ex. I to VII. But from Ex. I to VII it is seen that the enquiry was started on 16-5-1952. The estate tea-maker Gnanabaranam and his assistant Packiraj were examined by the management. The findings of the Manager are recorded in Exs. I to VII series. All these workmen were found guilty of the charges and were dismissed.

(5) The enquiry was conducted by the Manager in Tamil
[illegible] translated into English what was spoken by the
[illegible] noted in a book called "Enquiry Note". The
[illegible] on of the evidence recorded in the enquiry note
[illegible] by the Manager into Tamil and read out to the

workmen. The witnesses have not signed the enquiry proceedings except in Ex. III. The enquiry note is not before court. Exs. I to VII series are extracts from the enquiry note. The evidence given by the witnesses in the chief examination is not given in Exs. I to VII series as it was spoken by them. A summary of the chief examination is given in the manager's words. The questions and answers in the cross examination are given as spoken to by the witnesses themselves. The Manager has also given a summing up of the evidence with regard to each worker in Exs. I to VII series. In Ex. I to VII series the first paper is charge sheet and from sheets two onwards the evidence is recorded. This is in general the method followed by the manager in the enquiry proceedings. It is admitted by the manager that charge-sheets were given only after the enquiry.

(6) The learned counsel, Mr. Balagangadhara Menon on behalf of the Union contended that the enquiry was vitiated by the violation of the principles of natural justice on three grounds. (1) That the manager was the prosecutor as well as the judge in an enquiry regarding an incident in which it is alleged that the manager was surrounded, obstructed, threatened and restrained by force. (2) That no charge sheets were served on the workmen concerned before the enquiry was started. (3) No opportunity was given to the workmen to submit their explanations and to defend the charges against them. The workmen were not given any opportunity either to cross-examine the witness examined by the management or adduce defence evidence.

(7) The first point raised by the learned counsel is really a very substantial question of law and I am in full agreement with him. In order to have the sanctity of a judicial decision, a reasonable man must find in the enquiring officer one who is detached from the subject matter of the enquiry. Another person in the manager's place might have reached the same decision as that reached by the manager and in essence the workmen did not suffer any prejudice is no answer to this proposition of law. It is not so much the actual prejudice that has to be considered as the violation of the fundamental principles, according to which proceedings, including domestic enquiries should be conducted. If there are circumstances so affecting a person acting in a judicial capacity as to be calculated to create in the mind of a reasonable man a suspician of that person's impartiality those circumstances alone are sufficient to vitiate the proceedings held by him though in fact there might not have been actually any prejudice. Another well known principle of natural justice is that justice should not only be done but should manifestly and undoubtedly seem to be done also. I cannot take the manager Mr. Menzies to view and evaluate the enquiry proceedings and evidence in an impegardly judicial manner completely unconnected with the subjkraj were of the enquiry. This incident has to be disting not bear al other enquiries connected with matters arising in ne ven by ty day to .e s and

day business of the estate. I am of the view that the enquiry proceedings are vitiated by the violation of the principles of natural justice in so far as the manager was the prosecutor as well as the judge in this matter.

(8) It is admitted by the manager that the Charge-sheets were given only after the enquiry proceedings were closed. According to standing orders applicable to the workmen that when a workman is to be punished for misconduct a written charge is to be handed over to the workman concerned. The workmen concerned must be given an opportunity to submit their explanations and must be afforded an opportunity to lead such evidence as they may desire to lead. After the enquiry is held, if the departmental officer holding the enquiry comes to the conclusion that the charge against him has been proved, he is to pass the order of punishment. The workman in this particular case were not given written charge-sheets, but for want of charge-sheets I think no prejudice has been caused to any workmen. On the date of the incident itself on 14-5-1956 show cause notices were served on all workmen and WWI has admitted this. In the show cause notice itself, as admitted by WWI the specific allegations were given in detail. The enquiry was started on 16th May, 1952 and completed only on 12th May, 1952. On 16th when the enquiry was started charges were read out to all workmen in Tamil and they were asked whether they plead guilty or not. All of them pleaded "not guilty". An elaborate enquiry took place as seen from Exs. I to VII. From the questions put to Gnanabaranam and Packiaraj in their cross-examinations it is quite clear that the workmen knew the date, time, as well as the particulars of the offence for which the enquiry was being held. Their defence make it further clear that they were aware of the date, time and particulars of the offence complained against them. No grievance was made on behalf of the workmen in the course of the argument that the workmen were mislead in their defence nor they were prejudiced for want of written charge-sheet. The unanimous stand taken up by all workmen was they wanted at the alleged time and place to make peaceful representation to the manager with regard to the transfer of Govindan Nair from the field to the factory and they did it in a peaceful manner and nothing as alleged by the manager happened. For want of a charge-sheet no prejudice has been caused. In a domestic enquiry one should not expect a rigid observance of the rules of procedure prescribed either by the criminal or civil procedure codes but when the standing order itself lays down that the particulars of the offence complained of should be given in the charge-sheet there can be no doubt that the enquiring officer should have complied with this requirement of the standing order. But the question at issue is whether on account of this omission on the part of the management the workmen [illegible] question were prejudiced in their defence and whether [illegible] tra[illegible]asioned any failure of justice. According to section [illegible] [illegible]riminal procedure code even a criminal trial is not vit[illegible] on of th[illegible]count of any error in stating either the [illegible] by the [illegible]

offence or the particulars required to be stated in the charge-sheet and no omission to state the offence or their particulars shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice. As laid down in 1954 L. A. C. 307 at page 315 "Rules of procedure are only hand maids of justice and any departure from such rules of procedure as laid down in the standing orders would not be material unless it is shown that the workmen concerned had materially been prejudiced by the adoptation of an irregular procedure. There is no reliable evidence in any of the cases which we have before us that the workmen concerned had been prejudiced. In our opinion an enquiry conducted according to rules of natural justice would be sufficient". But whether an enquiry which has been conducted is a fair enquiry or not is a question of fact and is to be considered and answered on the facts of the particular case, if the fairness of the enquiry is challenged.

(9). The third point raised by the learned counsel is without any substance. The enquiry proceedings were conducted in the office of the manager in the presence of all workmen. Almost all the workmen cross-examined the witnesses and even adduced defence evidence. In my opinion the enquiry was conducted according to the rules of natural justice.

(10). As there is violation of the principle of natural justice, in as much as the manager himself was the prosecutor and judge, the decision of the manager to dismiss all the seven workmen has to be scrutinised by this tribunal. The case of each workman has to be considered individually on merits and the propriety of the orders of dismissal by the management has to be gone into. The entire record of proceedings of the enquiry is before this tribunal and they are marked as Ex. I to VII. The evidence has to be evaluated judicially in the case of each workman. The decision of the management in relation to charges against the employees will not prevail if (a) there is want of bona fides or (b) is a case of victimisation or unfair labour practice or violation of the principles of natural justice or (c) there is basic error on facts or (d) there has been a preverse finding on the materials. The decision of the management is also liable to the reversed if it is held by the tribunal that the punishment is so unjust that remedy is called for in the interests of justice (*Vide* 1951 II LLJ. 314 at 318). This was also the view taken by their Lordships of the Calcutta High Court in the case in Bathgate emloyee's Union, Calcutta V. Bathgate & Company Limited (1953 I LLJ 493). It was held in that case that if the rules of natural justice were violated the tribunal had the right to go into the merits of the dismissal order and see whether the action of the management were justified or not.

(11) Ex. I is the enquiry proceedings regarding Ponnuswamy. The witnesses Gnanabaranam and Packraj were examined on 16th May, 1952. The charge sheet does not bear any date. Ex. I contains the summary of the evidence given by these two witnesses in chief examination and the questions and answers in

the cross-examination are given as spoken by the witnesses. Ponnuswami cross-examined the witnesses and also examined two defence witnesses Tangiah and Kandaswami. From the questions put in the cross-examination and from the nature of the evidence adduced by him on his side he understood very well the charge against him. From the evidence in Ex. I it is seen beyond any doubt, that Ponnuswami was the ring leader in the incident which took place at 8-30 A. M. on 14th May, 1952. A group of persons surrounded the manager and the manager was pushing his way to the door when Ponnuswami jumped in front, turned round and blocked the way with his chest opposed to that of the manager's chest and he put his arm over the managers's shoulder. The manager struggled through and got out of the factory. Ponnuswami shouted in a threatening manner and insisted that unless Govindan Nair was given work the manager would not be allowed to leave the building. His dismissal order is correct and is hereby upheld. Ex. II is the enquiry proceeding regarding Israel. The charge-sheet is dated 19th May, 1952 and the witnesses were examined on the same day. The summary of the evidence of witnesses were in the chief examination and the questions and answers in the cross-examination are given in detail in Ex. II. Israel cross-examined the witnesses and examined on his side Raju, Dharmalingam and Subramaniam. Israel was the leader of the deputation which met the manager on the 7th day of May 1952 to make a representation regarding the transfer of Govindan Nair from the field to the factory and this fact is proved by two witnesses George Maistry and Sam. At the end of the deputation he also gave a warning to the manager. He blocked the way by getting in front of the manager. He had a grease-gun in his hand which he was shaking. He was shouting in a threatening manner that Govindan Nair must be given work. The dismissal order is correct with regard to him and I uphold the same.

(12) Ex. III is the record of proceedings regarding Yesudas. The charge-sheet is not dated. The witnesses examined are one George and another Jacob Joseph. These two persons have signed in Ex. III Paper. This was on 9-6-1956. The evidence given by these witnesses is not before court. Only the summing up of the manager alone is found in Ex. III. Even in the summing up there is no evidence of any participation of Yesudas in the alleged incident. The manager when examined before this tribunal as Ew. I has deposed that Yesudas got hold of his walking stick which was under his arm. I do not think it safe to place any reliance upon this interested statement of the manager coming as it is for the first time on 8-11-1955 i. e., after three-half years. I find that Mr. Yesudas is not a participant in the alleged offence. The dismissal order passed against is set aside. He has served the comyany 7 years faithfully and was never been guilty of any act of indiscipline. He is reinstated with back wages.

(13) Ex. IV is the enquiry proceedings regarding Massilamony. The charge-sheet is not dated. The summary of the Chief Examination and questions and answers given in the Cross Examination are given in Ex. IV. Massilamony cross-examined the witnesses and did not examine any defence witness. When the Manager was leaving the rolling room on the 14th morning it is Massilamony who gave the signal and then all the workers left the rolling room and followed Massilamony. He was holding a ekel broom in his hand with handle uppermost. He was one of those who tried to keep the Manager in the Factory by force. His order of dismissal by the management is correct and I uphold the same.

(14) Exs. V, VI, VII are the enquiry proceedings regarding Kumaraswamy, Muthiah and Packianathan, respectively. The enquiry with regard to these three took place on 16-5-1952. Here also the charge-sheets are not dated. Kumaraswami did not cross-examine the witnesses nor did he adduce any defence witnesses. Muthiah cross-examined the witnesses and also examined Rajoo on his side. Packianathan did not cross-examine the witnesses nor did he adduce any defence witnesses. The evidence against these three persons *i. e.*, Kumaraswami, Muthiah and Packianathan is that they were close to the right of the Manager at the time of the alleged incident. All the fifty men working in the Estate were near the scene of occurance. There is no evidence of any overt act against any of these three workmen. The Manager as EW1 has given evidence to the effect that all the seven men were close to him almost touching him and their attitude was threatening. I think the Manager has slightly exaggerated the part of these three people. These three men have to be punished but dismissal will be rather too severe. Kumaraswami was in service for 17 years and Muthiah and Packianathan were 22 and 25 years respectively in the service of the Company with unblemished record of service. Kumaraswami alone was punished but immediately it was compromised. The period from 15th May, 1952 till this award becomes enforceable will be treated as period of suspension for these three workmen. They are reinstated without any back wages and continuing of service.

(15) This is an Estate ideally managed without any troubles between the Labour and Management. The Manager was in the Estate for nearly 30 years and this is the only silitary sad episode during his term of service. The workmen concerned were also in the Estate for a considerably long period. Thee Regover and employee relationship was cordial throughout. a, Munnar.

(16) As described above dismissal orders agaim Tribunal swami, Israel and Masilamony are justifiable on the 04/54 dated found in the case. There is no evidence against Y. Tribunal as dismissal is unjustifiable and he is reinstated with heir evidence Kumaraswami, Muthiah and Packianathan were de Trivandrum right side of the Manager at the time of the heard. By the There is no overt act against any of these ireeior argument. in the alleged incident which took place on the

May, 1952 is not serious. The punishment of dismissal is too harsh for these three. The period during which these three people were out of employment will be treated as period of suspension without any back wages and continuing of service. I pass the award in terms described above. Both parties will bear their respective costs. This award will become enforceable after the expiry of thirty days from the date of its publication in the Travancore-Cochin Government Gazette.

V. U. JOSEPH,
Industrial Tribunal.

Ernakulam,
25-7-1956.

APPENDIX

Exhibits marked on the side of the Employer.

Ex. E.	I.	Enquiry proceedings with regard to Ponnuswami.
Ex.	II	" " " Israel
Ex. E.	III	" " " Yesudas
Ex. E	IV	" " " Massilamony
Ex. E	V.	" " " Kumaraswami
Ex. E	VI	" " " Muthiah
Ex. E	VII	" " " Packianathan
Ex. E	VIII	Withdrawn report filed by Sub-Inspector of Police, Ernakulam in C. C. 772 of 52, on the files of the Mukundapuram Magistrate Court dated 1-7-1954.
Ex. E	IX	Acquitted order in C. C. 772/52 on the files of the Mukundapuram Magistrate Court dated 2nd July, 1954.
Ex. E	X	Standing orders of the Estate.

Witnesses on the side of the management.
EW1—Manager Menzies

Witnesses on the side workmen.
WW1—Muthiah.

Labour Department.

NOTIFICATION.

No. L. Dis. 17366/56/DD. *Dated, Trivandrum, 31st July 1956.*

The award of the Industrial Tribunal, Ernakulam in respect of the dispute between the General Manager, K. D. H. P. Co. Ltd., Munnar, and their workmen represented by the Regional Secretary, Estate Staff's Union of South India (High Range Branch) Munnar received by Government on 13-7-1956 is hereby published under Section 17 of the Industrial Disputes Act 1947 (Central Act XIV of 1947).

By order of His Highness
the Raj Pramukh,
V. V. Joseph,
Industries Secretary.

V. U. Joseph, B. A. & B. L.,
Industrial Tribunal, Ernakulam.

INDUSTRIAL DISPUTE 9/56

Between

THE GENERAL MANAGER,

K. D. H. P. Company Limited, Munnar

And

THE REGIONAL SECRETARY,

Estate Staff's Union of South India (High Range Branch) Munnar.

Advocates: Mr. P. Govindan Nair, B. A., M. L., representing Menon and Pai for Management.

Mr. P. Balagangadhara Menon for the Regional Secretary, representing the workmen.

AWARD.

1. In exercise of the powers conferred by Section 10 (1) (c) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) the Government of Travancore-Cochin State by order G. P. L 4-15587/54/DD. dated 14-4-1956 referred to this Tribunal for adjudication an industrial dispute between the General Manager, K. D. H. P. Company Ltd., Munnar and the Regional Secretary of the Estate Staff's Union of South India, Munnar. This dispute was originally referred to the Trivandrum Tribunal for adjudication by the Government Order L7-8204/54 dated 4-10-1954 and the same was registered before that Tribunal as Industrial Dispute 43 of 1954. Both sides closed their evidence during the pendency of this dispute before the Trivandrum Tribunal and arguments alone remained to be heard. By the written consent of parties the case was posted for argument.

2. The annexure to the reference mentions the matter in dispute as follows:—

(1) Whether the discharge of Shri P. T. John, Time-Keeper, Grahamsland Estate is justifiable.

(2) To what relief is he entitled-

(a) if the discharge is justifiable?

(b) if not justifiable?

3. The Estate's Staff Union General Secretary filed a statement of the case in court on 4th December, 1954 embodying the contentions of the workman as follows. The service of Shri P. T. John was terminated arbitrarily and without any justifiable reason and is not in accordance with law. The discharge is an act of victimisation and as such is unjustifiable. He should be reinstated with all arrears of salary together with litigation costs. In the reply statement of the management filed on 11-1-1955 it was contended that the service of P. T. John was terminated for continuous inefficiency and unsatisfactory performance of his duties. He did not show any signs of improvement inspite of repeated admonitions and warnings. The company had no other go but to discharge him. The management has the undisputed right of terminating the service of an employee by giving him 30 days' notice or one month's pay in lieu of notice. The discharge of John was just and proper and according to the provisions of the standing orders governing the Estate Staff. The management also contends that P. T. John is not a workman within the meaning of the term as defined in the Industrial Disputes Act and no industrial dispute could possibly arise with reference to his discharge. His work is supervisory and directional in nature not involving any manual or clerical work. The Union General Secretary filed a rejoinder on 11-2-1955 denying the allegations contained in the reply statement of the management.

4. A dispute between the employers and the employees to be an industrial dispute within the meaning of the Section 2 (k) of the Industrial Disputes Act, must be between the employers and workmen as defined in the Act. There cannot be any industrial dispute between employers and employees who are not workmen. The dispute in this particular case is in connection with the discharge of Shri P. T. John an employee. If he is a workman, the dispute is undoubtedly an Industrial Dispute but if he is not a workman, the dispute will not be an industrial dispute and cannot form the subject-matter of an adjudication by this tribunal. So the first question to be decided is whether Shri P. T. John is a workman as defined in the Act. In order to ascertain whether a particular employee is a workman or not, the nature of the duties an employee has to perform mainly or primarily or substantially has to be looked into. The designation is no safe guide to determine this. It is the nature of the work done by the employee and the degree of his responsibility that determine whether he is a workman or not. The point to be considered is whether P. T. John is doing substantially clerical

or manual work. If the main work is either manual or clerical but incidentally if he has to do some supervisional work also that will not take him out of the category of workmen as defined in the Act. On the contrary if the main work is either supervisory or directional and incidentally if he has to do either some manual or clerical work that will not give him the status and privilege of a workman as defined in the Act. There is a third group of employees also who may not possess any directional or controlling powers, yet they may not be workmen because they are not doing any manual or clerical work. But we are not concerned with third group in this inquiry. These principles have been laid out as early as 1949 by His Lordship Justice Bind Basni Prasad as the Chairman of the Bank Conciliation Board. These observations have been quoted with approval by the Lordship of the Labour Appellate Tribunal of India in a large number of cases and I think it is unnecessary to quote any of such decisions. The principle is beyond any controversy. Each case depends upon the evidence in that case. The evidence in this case has to be tested in the light of the above principles.

5. Mr. Balagangadhara Menon the learned counsel for the union opened his argument stating that since in the order of reference the question whether P. T. John is a workman or not as defined in the Industrial Disputes Act is not specifically referred, this tribunal will not be justified in going into the question whether Mr. John is a workman or not, and this Tribunal's function is to pass an award on the matters referred to it and arising incidental thereto.

The jurisdiction of this tribunal depends upon the question whether the matter referred is an industrial dispute or not. Every dispute is not an industrial dispute. The management contends that Mr. John is not a workman and if John is not a workman there cannot be any industrial dispute on his discharge. So in order to have jurisdiction to determine the points referred to this tribunal, this tribunal must have jurisdiction and this question depends upon the further question whether the matter is an industrial dispute or not. In 1955 2 LLJ. 595, the question whether Shri Pavoo is a workman or not was not covered by the order of reference. In the statement before the tribunal the management contended that Shri Pavoo is not a workman and there is no dispute before the tribunal. Pavoo contended that the Tribunal cannot go into question. This point came up for consideration in the appeal and in para 6 on page 598 their Lordships of the Labour Appellate Tribunal held that the tribunal can go into that question. Their Lordships held that it is perfectly open to an Industrial Tribunal to go into the question whether the Government had jurisdiction to make the reference. Under Section 10 the Government's power of reference is undoubtedly limited to an Industrial dispute. Sub-section 4 of Section ... of the Industrial Disputes Act is no bar to the tribunal ... the question whether the reference made by the ... was with or without jurisdiction. There is no ... in

sub-section 4 or anywhere in the Industrial Disputes Act. In 1951 I LLJ. 469 their Lordships of the Labour Appellate Tribunal decided that the appropriate Government is competent to make a reference, under Section 10 of the Industrial Disputes Act, if before the reference, the Government is satisfied that (i) the dispute in fact has arisen (ii) that the dispute is an industrial dispute and (iii) the appropriate Government when making the reference had applied its mind to the subject matter of the reference. It is open to a party to the dispute within these marrow limits to question the competency of the appropriate Government making the reference before a Tribunal.

1953 I LLJ. 174 their Lordships of the Supreme Court held that it is open to a party seeking to impung the resulting award to show that what was referred by Government was not an industrial dispute within the meaning of the Industrial Disputes Act and therefore the Industrial Tribunal bad no jurisdiction. In Andrew Yule and company case reported in 1955 I LLJ. 192 the West Bengal Industrial Tribunal has taken a contrary view and held that whether a State Government's reference is an Industrial Dispute or not cannot be raised before the Industrial Tribunal itself. This decision of the learned Tribunal is based on the ground that the decision of the Lordships of the Labour Appellate Tribunal in 1951 I LLJ. 469 was not approved by their Lordships of the Supreme Court in 1953 I LLJ. 174. I most respectfully beg permission to differ from the Tribunal. In the Supereme Court case their Lordships clearly held that the party can question an award on the ground that an Industrial Dispute did not exist. But the learned Tribunal holds that this can be done only in a court and not before a tribunal. The question arose in the Supreme Court and their Lordships answered that the resulting award can be impunged in the court. Their Lordships of the Supreme Court did not say further that it cannot be questioned before tribunal. Their Lordships of the Supreme Court did not express any opinion as to the decision of their Lordships of Labour Appellate Tribunal in 1951 I LLJ. 469. For the forgoing reasons I hold that the question whether Mr. P. T. John is a workman or not can be considered by this Tribunal.

6. Mr. Balagangadhara Menon argued next that it is not open to the management to raise the question whether Mr. John is a workman or not before this Tribunal in as much as the management had waived their right as they did not raise it before the Conciliation Officer. According to him Government take cognisance of a dispute only on the report of a Conciliation Officer as provided in Section 12 of the Industrial Disputes Act. The report of the Conciliation Officer is a condition precedent for a reference by Government. He also quoted as an author/sub or this position Kandan Textile case (1949 I LLJ 875). It'e guit correct to say that the report of a Conciliation Officer the empdition precedent for the Government to make a refercme whethn the dispute relates to a public utility service and noticed is wheun ction 22 has been given it is incumbent to

hold Conciliation Proceedings. But when the dispute is one not relating to Public Utility Service there is no necessity to hold Conciliation Proceedings. In such cases the Officer may or may not. Kandan Textile case is no authority for this position. In that case the Government made the reference accepting the recommendations contained in two letters written by Labour Commissioner to the Government. But none of the eleven matters mentioned in the annexure to the reference order is to be found in the said two letters of the Labour Commissioner. In fact the letter written by the Labour Union Secretary to the management refers only about a dispute regarding the claim of seniority with regard to some of the workers after the re-opening of the Mills. And this question of seniority is not referred in the annexure as a matter of dispute. What happened was that the list of eleven matters contained in a letter addressed by the President of Kandan Textiles Union to the Secretary to Government was copied verbatim as an annexure to the Government order. In order to have an Industrial Dispute there must be a demand and refusal. In the Kandan Textile case there was neither demand nor refusal. The Government will not be justified in passing an order of reference simply because some individual or organisation addressed a communication to Government. This case is no authority for the position that every dispute before it is referred by the Government to a Tribunal or Court has to pass through a conciliation process. Section 10 clause 1 of the Industrial Disputes Act lays down that the Government cannot make a reference either to a Tribunal or Court when an Industrial Dispute is apprehended or actually exists.

There is absolutely no evidence about any Conciliation Proceedings in this case. Mr. Nicholson has stated in the cross-examination that he did not attend any conciliation proceedings in the matter of Mr. P. T. John's dispute. He further said that it is Mr. Dickson who usually attends conciliation proceedings on behalf of the company and he does not know whether in fact Mr. Dickson ever attended any conciliation proceeding in connection with John's dispute. Mr. John as WW1 has not given any evidence on this point of conciliation. In the light of the above evidence, it cannot be said whether there was actually any conciliation proceedings at all in this dispute before reference.

In the statement as well as in the re-joinder filed by the union no case of waiver is set up. Waiver is the abandonment of a right and can be either expressed or implied. It is a matter for pleading and proof. There is neither pleading nor proof of any waiver in this case. So even if there was conciliation proceedings in this matter waiver cannot be presumed; Mr. Balagangadhara Menon cited 1952 II LLJ 468; A I R 1950 Madras 284 as authorities for the position of waiver. In 1952 II LLJ 468 the Punjab National Bank case their Lordships of the Labour Appellate Tribunal found waiver on the evidence adduced in the case. There was a strike in the Bank and on the intervention of the Central Government 150 men who struck work in the Head Office and branches of the bank were taken back in service.

The Bank gave an undertaking to the Government not to insist on its right to dismiss any one of the workmen who had absented themselves by joining the illegal strike. The Bank consented not to set up the strike as a ground for their non-employment, that is to say, the bank condoned the absence of the strikers. Their Lordships on the evidence found waiver and held that it is not open to the Bank to plead justification for dismissal on the ground that they had participated in an illegal strike. In A I R 1950 Madras 284 also their Lordships found waiver on the strength of evidence adduced in the case. It is a case arising under the Madras Building (Lease and Rent Control) Act. The Act provides that a cause of action for eviction arises in favour of the Landlord on default to pay one month's rent. In this case provision is made in the lease-deed that cause of action for eviction in favour of the Landlord will arise only if two months' rent remains unpaid. The lease-deed was executed after the Act came into force. Their Lordships held that cause of action for eviction will arise only on default of two months' rent as provided in the lease-deed. The waiver is found on the facts. These two cases are no authority to find waiver on the part of management in this paticular case.

7. To ascertain whether Mr. John is a workman or not as defined in the Industrial Disputes Act it is essential to know the nature of his work. Exs. J to T are registers maintained in the factory Estate. Ex. J is the Record of Manufacture maintained in rolling and withering rooms for noting temperature and pressure. Ex. J starts with the entries made on 15-10-1953. There are 45 lines on each page and 30 and odd entries are seen made in every line involving a lot of calculations. On an average more than one page is taken for a day. Ex. K series are green leaf weighment registers, maintained to check weighment of tea leaves on its arrival in the factory. The Time-keepers have to weigh the leaves personally and note the weight field-wise. They have to add up and enter the total weight in the book for which they have to give duplicate receipts. This has to be done in the morning, noon and evening. Ex. M series are green leaf receipt books prepared in duplicate noting the load and weight. These receipts are sent to the office. Ex. N is the Muster-Roll for coolies working in the estate. Forty-five coolies are working daily on an average in the factory. Exs. L, O, P, and Q are registers maintained for noting the weight of different varieties of Tea prepared in the factory. Ex. R is the leave register for coolies. Ex. S series 48 in number are leave books of individual workers. Ex. T is the factory muster book, Ex. U series are attendance cards. On an average more than half a page is to be written in K series L, N, O, P, Q, R, S, & T, involving a lot of calculations. According to John all those books are maintained by John and the other time-keeper Issac. Almost all the entries are made by them. He has proved his hand-writing in a number of pages of these several books. The staff consists of 4 persons; one Head Tea-Maker, another Assistant Tea-Maker and two Time-keepers; and the Tea-Maker is in charge of the factory.

In one shift one Time-keeper alone will be on duty. Time-keepers take instructions from the Tea-Maker for the work they have to do.

8. The case set up by the management in the statement is that Mr. John is not doing any clerical or manual work. His work is only supervisory. No details are given as to the nature of the supervisory work. In the chief examination Mr. Nicholson said that John has to record temperature and pressure incidental to his supervisory work. In the cross-examination he admitted that rolling room and whithering room register called Record of Manufacture is maintained by the Time-keepers on duty. The Time-keeper has to keep muster-book on certain occasions and all the members of the staff share the maintenance of various Tea account books. Time-keepers on duty have to check the weighment of leaf every day and pass receipts. Ex. J to U were produced in court after his cross-examination and he was again examined on 19-11-1955 and admitted that these books are maintained by all the members of the staff and entries are to be made daily in Exs. J, K, M, N, T, O, P, & U and John must have made only 5% of the entries. W W 1 John has definitely said that he is maintaining all these books while on duty and has pointed out several pages in several books containing his handwriting. Time-keepers take instructions from Tea-Makers and if the Tea-Maker has given him order to make entries, it becomes the duty of the Time-keeper to maintain all these books. Mr. Nicholson has admitted that he has not either inspected or checked these books. The books were not shown to him nor did he identify the hand-writing of anybody else in these books. If the entries were made by others, Nicholson could have been asked about it. The Tea-maker and Assistant Tea-Maker and the other Time-keeper are all available for examination and none of them was examined. Mr. Nicholson has said that 5% of the entries alone were made by John and he admitted in the cross-examination that this was only his opinion. The version given by John remains uncontradicted. All these entries must be taken to have been made by John and the other time-keeper during their duty hours as part of their work. John's duties must therefore be taken to involve a good deal of clerical work daily in keeping a large number of registers maintained in the factory and these clerical duties are of an important nature and it ranges from morning till evening. These clerical duties are not confined to a particular part of the duty hours. Over and above this clerical work, he has to be in the rolling and withering rooms noting and adjusting temperature and pressure according to John in every five and 30 minutes and according to Mr. Nicholson every 30 minutes and one hour. This work also is an important ma[illegible] work spread throughout the duty hours. A manual work[illegible] clerk is one who generally does routine manual or clerica[illegible] of writing, making calculations under the direction of a[illegible] Mr. John is working under instructions from Tea-M[illegible] has no power to go beyond the instructions of his sup[illegible]

In chief examination Mr. Nicholson deposed tha[illegible] not on withering room is *concerned* with the s[illegible]

the arrival of tea leaf in the rolling room and its subsequent distribution to the various machines. It is not spoken as to what John has actually to do. By merely stating that John is concerned, it is not possible to know the nature of his responsibility in the matter of the arrival of the leaf and its subsequent distribution to the various rooms. John may also have connection with the work of distribution. But that does not meen his main work is supervision. The staff consists of 4 members; and all these four persons may be concerned with the supervision work. In the absence of such details it is not possible to know whether he is having any supervisory work. In Ex. VIII and XI the confidential reports about John's work for the years 1952 and 1953, nothing is reported about his supervisory work. On the other hand from the reports in Ex. VIII and XI it is seen that John has fair knowledge of the books under his control and factory routine and also fair knowledge of manufacture in general etc. If John is having supervisory work alone, I don't know why the reports are silent about that. In the confidential reports and letters sent to General Manager, no mention is made about John's supervisory work. On the contrary the main reference is regarding the recording of pressure and temperature in the rolling and withering rooms. In 1950 John was dismissed from the service of the company and he was taken back with back wages on the intervention of the officers of the Labour Department, evidently because the dismissal of John gave rise to an industrial dispute. If John was not a workman within the meaning of the Act the management would not have yielded to such a course; they would have refused any interference by the officers of the Labour Department. It is nowhere in evidence in this case whether John was ever in a position of command or to issue orders or supervise the work of anybody in the factory. In view of the foregoing reasons I am of opinion that P. T. John was doing mainly clerical and manual work and is a workman as defined in Section 2 (S) of the Industrial Disputes Act.

9. The services of Shri P. T. John were terminated by a discharge order Ex. I dated 5-5-1954. Notice of discharge giving 30 days time expiring on Monday the 31st May, 1954 is Ex. IV dated 27-4-1954. The termination of service as originally contemplated by the management is to take effect on the 31st May, 1954. But abruptly all on a sudden the service was terminated on 4-5-1954 by Ex. B on the ground of continued non-co-operation and unsatisfactory perfomance of his duties. The reasons for the discharge as stated in Ex. I and IV are "continuous inefficiency and unsatisfactory performance of his duties", and ... termination of service was ordered under standing order 12 ...rning the estate staff. On a previous occasion John was ...e-sheeted on 10th June 1953 by Ex. XI for wilful insubor... ...n and other causes. A regular inquiry as provided in the ... orders was made and he was found guilty and was ... Ex. X dated 17th June, 1953 is the letter of warning ...eneral Manager to John. Ex. IX is the record of the ... of the inquiry. For sometime there was no trouble.

With Ex. II dated 6th April 1954 from the Assistant Manager Mr. Lee to the General Manager the proceedings to terminate the services of John must be taken to have been inaugurated. In Ex. II an account of John's work in the factory from 1-1-1954 to 6-4-1954 is given. It is reported therein that John cannot be relied upon; he is a troublemaker and of an undesirable character. His carelessness regarding the adjustment and recording of temperature and pressure in the withering and rolling rooms are given in detail. In March 1954 it is reported that Mr. Lee had occasion to witness an instance of gross insubordination of John to the Manager Mr. Nicholson. After 5 days this was followed by Ex. III dated 11th April, 1954. This report was by Mr. Nicholson to the General Manager. In Ex. III it is stated that John has overstayed his leave for six days from the 3rd to 9th of March. Afterwards he absented on 20th of March without leave in anticipation of getting leave. He wrote Ex. VII (b) letter on 20-4-1954 for four days leave. As leave was not granted he repeated his request for leave on 21-4-1954 twice by Ex. VII D and VII E. In Ex. VII E, he stated that in anticipation of sanction, he was leaving for Trivandrum and actually went to Trivandrum and returned from there only on 24th of April. Company year is from Ist of December to 30th November and the total number of permissible leave is 41 days in one year. By 10th April, 1954 he had exhausted all the 41 days' leave. In Ex. III Mr. Nicholson has given very serious allegations about John's work in the factory. In fact Mr. Nicholson visited the rolling and whithering rooms and checked the temperature and pressure on 13th and 19th of April and found very grave mistakes. Ex. VII A & VII B reveal the result of Mr. Nicholson's inspection. Ex. VII A & VII B were sent to the General Manager with Ex. VII letter on 21-4-1954. It must be taken that all these reports and papers were prepared not in the routine course of day-to-day business but it must be with a view to get rid of John. As detailed above, just on the eve of Ex. IV the discharge order. John had overstayed leave, absented without leave and in anticipation of getting leave took a trip to Trivandrum on 21st apparently for removing two molars and returned only on 24th. The rolling and whithering room records revealed very serious dereliction of duty on the part of John. In Ex. II Mr. Lee reports about John's gross in-subordination to Mr. Nicholson. John is said to own a taxi car. He was found smoking in prohibited area. These are all misconducts under the standing orders.

(10) Considering the accusation against John as revealed in Ex II, III, VII series and the quick succession in which they were brought to light, I am of the view that this is really the termination of John's service for misconduct under the colour of discharge with one month's notice or in lieu of pay thereof. It is tainted by extraneous considerations and ulterior motives. There was never any report of inefficiency in the work of John at any time earlier. On the other hand in the confidential report Ex. XI dated 16th December 1952 and VII dated 4th December 1953, absolutely no charge of inefficiency is seen. According to

standing orders 15 (marked as Ex. XVI), a member of the staff cannot be dismissed for misconduct unless he is given a chance to explain the circumstances alleged against him. John was not given any chance to explain any of the allegations against him. He was rather caught unawares in this. The procedure laid out in standing order 15 has to be followed in all cases of termination of service for misconduct. Under standing order 12 termination of service by thirty days' notice or one month's pay in lieu of notice can be availed of only in cases other than those of misconduct.

(11) Even in cases where under the standing orders it is permissible to terminate the services with one month's notice or payment in lieu of notice it is not open to an employer to exercise this right in an arbitrary manner and the *bonafides* as well as the justifiability of the act of the employer has to be gone into. In the Buckingham and Carnatic Mills case it was laid down that in the cases of termination of service by discharge by giving notice or pay in lieu of notice the Tribunal has to go into the question whether the employer acted in a perfectly *bona fide* manner or with an ulterior motive or his conduct was arbitrary or he has acted with unnecessary harshness or there was victimisation or unfair labour practice. I do not think that the employer in this particular case has acted with *bona fides*. A look into the back ground of the dispute may not be out of place to determine the question of *bona fides* on the part of the employer. The trouble seems to have started in the beginning of 1950. John was dismissed sometime before Ex. XII. Ex. XII a letter dated 28th April, 1950 from the General Manager, K. D. H. P. Company to the Honorary Secretary, E. S. A. S. I. High Range, Munnar explaining the circumstances that led to the dismissal of John from the service of the company. In the letter the General Manager asserted definitely that it was no longer possible to take him back into service. It is said in that letter that John's behaviour is against discipline and his actions are designed to be irritating and provocative. But with all that John was taken back into the service of the company with back wages on the 12th of February 1951. Exs. XIV & XV are letters ordering reinstatement given to John and the Grahamsland Manager respectively. This was on 12th of February, 1951. It is not known how he achieved this extraordinary success. Anyhow the General Manager was compelled to take him back even with back wages. For sometime matters moved in a peaceful atmosphere. One day in April, 1953 there was a quarrel among some mazdoors in the factory premises. The Manager Mr. Nicholson gave a letter to one mazdoor Kuttappan to be handed over to Inspector of Police Devikulam by way of introduction. This Kuttappan came to John's house with the letter before going to the Inspector of Police. John is the Secretary of Local branch of the Indian National Congress. The Manager Mr. Nicholson got back the letter from Kuttappan on the ground of himself having gone in John's house before proceeding to Devikulam. Manager's version is that on the intervention of the Union Secretary there was a Panchayat and the matter was

compromised and the letter was got back after compromise as there was no necessity to give it to the Inspector of Police. Mr. John wrote Ex. C letter to the General Manager complaining against the action of the Manager Mr. Nicholson in as much as the Manager got back the letter from Kuttappan on the ground of having entered John's house. The General Manager directed the Manager Mr.Nicholson to give his explanation on the matter. The explanation given to the General Manager by Mr. Nicholson and the letter addressed along with it are Exs. A & A1. Again Mr. John complained to the General Manager that Mr. Allen, manager of another estate owned by K. D. H. P. Company used abusive language against the Prime Minister of India.Mr. Gnanapathy the local M. L. A. and the Kottayam D. C. C. President Mr. V. O. Markose were given information about this. The General Manager Mr. Walker took a very serious view of this matter and wrote Ex. E letter to John. In Ex. E he has expressed his readiness to be present at an interview the following day itself at Mattupetty. As arranged the General Manager Mr. Walker, Mr. Allen, Mr. Gnanapathy the M. L. A. and Mr John met at Mattupetty. Ex. D is the minutes of the proceedings of the meeting of these four persons. Mr. Allen expressed regret and apologised. Mr. John then brought to the notice of the General Manager that Mr. Allen was not the only person indulging in such loose talks but other members of the management staff also occassionally do so thereby suggesting that Mr. Nicholson was also one of those who used abusive language against the Prime Minister. Mr. Walker suggest to John to provide the details about it and the meeting proceeded with regard to other matters. This meeting took place on 15-5-1953 as is seen from Ex. D. On 10-6-1953 he was served with Ex. X, a notice asking him to show cause why his services in the estate should not be terminated. In the notice he was charged with wilful insubordination to lawful authority under clause (a) and (g) of the standing order 14. An inquiry was conducted on 13-6-1953 in the office of the Head Quarters of the company. Ex. IX is the minutes of the proceedings of the inquiry. It was revealed in the inquiry that on 9-6-1953 there was an altercation between Mr. Nicholson and John and they were about to come to blows. Mr. John rose to his feet when Mr. Nicholson said that "I have had quite enough of this nonsence". The alleged misconduct was proved at the inquiry but the General Manager dropped the proceedings with a warning Ex. X dated 17th June, 1953. John replied to Ex. X to the General Manager by Ex. F dated 5-7-1953, condemning the nature of the inquiry and the charge. In Ex. F. Mr. John has made several allegations against the Manager Mr. Nicholson such as that he is out for ruining Mr. John and so on. After Ex. X dated 17-6-1953 there was a lull. It is quite clear there is no love lost between the Manager Mr. Nicholson and John. Their relations were strained even before 28th April, 1950 the date of Ex. XII. This is the back ground of the history of the present dispute. In the light of the strained relations and atmosphere the termination of John's service by discharge is not a *bona-f*

act. He has proved a perpetual source of worry and annoyance to the management. Mr. John has proved a terrible fighter, for every inch of his right. The management naturally wanted to send him away and a discharge with notice pay was thought to be a short-cut and easy method. I therefore find that the discharge under standing order 12 of the Estate Staff, is without bona-fides on the part of the management. The discharge is motivated by the ulterior motive to get rid of an employee. This is victimisation by the estate manager for the complaints John had made against him and is not a bona-fide act.

(12) The termination of John's service was really for misconduct though it was done under colour of discharge. In order to terminate the service of a member of a staff for misconduct the management has to comply with the provisions laid down in standing order 15. In this particular case there was no compliance with the provisions of standing order 15. Where the real reason for the termination of service is misconduct on the part of the employee, the management cannot, in law, take the convenient course of terminating his service by notice or payment in lieu of notice. A charge ought to have been framed against him. This was the observation made by their Lordships of the Labour Appellate Tribunal in seth V. United Commercial Bank case reported in 1953 L. A. C. 248. In this case the services of a Bank Clerk was terminated by a discharge notice as provided in the standing orders governing the Bank Staff. On 12th of May, 1951 a cheque for Rs. 23,000 drawn on the Central Bank was presented for clearance at the opening hours of the Bank. The cheque was immediately sent to the Central Bank and the manager instructed the complainant then and there to contact the Central Bank to know whether the cheque has been passed. Within a few minutes' time the manager asked the complainant whether he had already contacted the bank and on his reply that he had not, the manager flew into rage and abused him. The manager did not wait to get the explanation of the Clerk. The Clerk complained to the Head Office against the action of the manager. The Clerk was discharged with notice pay. No charge for the alleged negligence or disobedience of the orders of the superior was framed against him and his explanation thereto was not asked. It was observed by their Lordships in the Appeal case that "it is a matter for serious consideration whether it would be open to an employer to avoid framing a charge and to take recourse to other easier expedients for the termination of service, by following a procedure which would have the effect of robbing a workman of his explanation which he could have offered if a charge had been framed and by avoiding an enquiry into the charges which is obligatory on the part of the Management where an employee has been charged for miscoduct. We are of opinion that this point is also a substantial point of law, though we reserve our final opinion on it. This is a decision of the Division Bench of their Lordships Labour Appellate Tribunal of India composing of their Lordships J. N. Majundar and R. C. Mitter. The same Bench considered the question of law in the case reported in 1954

I LLJ. 144. In this case charges were framed against two workmen for committing assault in the factory. This was a misconduct under the standing orders. The workers were called upon to show cause why they should not be dismissed. But the workmen refused to accept notice. The company discharged them by an offer to pay one month's pay in lieu of notice. Their services were terminated by taking recourse to another rule in the standing orders and avoided an inquiry into the alleged misconduct. It was laid down by their Lordships that "It appears to us that the real motive which moved the company to terminate their services was their alleged complicity in the alleged assault. That being so, it was, in our opinion, not open to the company to adopt a short-cut by terminating their services by notice. In so doing the company had not acted in good faith. This was followed in case reported in 1956 I LLJ. 319. It was held in this case by their Lordships of the Appellate Tribunal that " Where the discharge of a workman though alleged to be in pursuance of the terms of contract of service (by payment of a month's salary in lieu of notice) was really for an alleged act of misconduct and where there was no proper inquiry nor the concerned workman was given any opportunity to explain or defend himself, the discharge must be held to be unjustified and invalid". Even if proceeding on the basis of the terms of contract, it could hardly be argued that the management has the unfettered right to discharge a workman either with one month's notice or payment in lieu thereof and their action is not subjected to interference by the court of law. Even a permanent employee, after a long lease of service, can be discharged under the pretext of some reason or other and the obligation will be to pay one month's salary. In other words the terms of the standing orders can be enforced against any employee at any time irrespective of any other considerations. This is not in consonance with the modern concepts of social justice governing the employer-employee relations as laid down by Their Lordships of the Federal Court in the case of Western India Automobile Association V Industrial Tribunal, Bombay (1949 LLJ. 245).

(13) It thus follows that considered from both points of view the action of the Management cannot be upheld and I hold that the discharge of Shri P. T. John is unjustifiable and cannot be upheld.

(14) In the matter of relief I am constrained to deviate from the normal relief of reinstatement to that of compensation by the special facts arising in this case. In doing so, I am not unaware of the consequence that follow thereby. Mr. John served the Company for over 14 years and he is over 40 years of age and on him has befallen the duty of maintaining rather a large family. In these days of unemployment it may cause him the great agony. But for the Industrial peace I cannot but adopt this course. He is unable to get on with others. Mr. John was put in Kanniamally Estate in 1943.

He got into trouble there by writing petition against the Tea-maker and he was transferred to Nellatanni. He had to be transferred from there on the strong representations of the Manager to Yellapatty Estate. He had worked in Seven Mallay Estate and finally he reached Grahamsland. The K. D. H. P. Company was shunting him from Estate to Estate in the hope that he might improve and maintain good relations with his Co-workers and management staff. EX XII will give an indication as to the number of Estates in which he had occasion to work and his different activities in each of them. Exs. II and III, VIII and XI reveal that John is a disturbing influence on both staff and labour, creating an atmosphere most unfavourable to good relations and work. It is stated in these exhibits that the management had lost its confidence in John and I think correctly. It is not advisable to thrust a worker upon the management when the latter has lost confidence in him. John's presence in the factory is not at all congenial to the growth of sound discipline and good relations among other members of the staff and labour. I am definitely of opinion, based on the evidence available in this case, that there would be no harmonious relationship if an order of reinstatement is made in favour of John. But at the same time he is deprived of an employment and he should be paid an adequate compensation. He has put in 14 years of service in the Estate. I award the workman in question a compensation equal to 1½ months' average earnings for every year of completed service. The average earnings should be calculated on the earnings of the workman for the three years immediately preceding his discharge. The Company will pay all these amounts within 15 days from the date when this award become enforceable. Over and above the compensation amount he will be entitled to get all other retirement benefits. The parties will bear their respective costs. I pass the award in terms indicated above and shall become enforceable after the expiry of thirty days from the date of its publication in the Travancore-Cochin Government Gazette.

Ernakulam,
12-7-1956.

V. U. Joseph,
Industrial Tribunal.

Appendix.

Exhibits on behalf of workman.

A. Letter from the General Manager to Indian National General Secretary dated 28th April, 1953.

(1) Letter written by the Manager to Mr. Dickson dated 22nd April 1953.

B. Discharge notice sent by Mr. Nicholson to Mr. P. T. John dated 4th May, 1954.

C. Letter written by Indian National Congress Secretary by John to the General Manager, K. D. H. P. dated 16th April 1953.

D. Records of Proceedings of the meeting held in Mattupetty by General Manager Mr. Allan and Mr. N. Ganapathy M. L. A., and Mr. John dated 15th May, 1953.

E. Letter written by General Manager to the Secretary Indian National Congress Mandalam Committee dated 13th May, 1953.

F. Letter written by P. T. John to the General Manager dated 5th July, 1953.

G. Letter written by General Manager to P. T. John dated 22nd July, 1953.

H. Certificates issued in favour of Shri P. T. John (H. Series 8 in number issued in favour of John).

J. Records of manufacture from 15-10-1953 to 12-3-1954.

K.	Greenleaf Weighment Register from 15-11-1952 to 19-5-1953	1 in No.
K1.	Greenleaf Weighment Register from 20-5-1953 to 4-11-1953	1 ,,
L.	Not received	
M.	Greenleaf Receipt Book	1 ,,
M1.	Greenleaf Receipt Book	1 ,,
M2.	Greenleaf Receipt Book	1 ,,
M3.	Greenleaf Receipt Book	1 ,,
N.	Muster Roll Book from 1-3-1952 to 31-12-1953	1 ,,
N1.	Muster Roll Book from 1-1-1954 to 31-5-1955	1 ,,
O.	Bulk Tea Book from 12-6-1953 to 13-6-1955	1 ,,
P.	Sifted Tea Book from 27-11-1951 to 11-6-1953	1 ,,
P1.	Sifted Tea Book from 13-6-1953 to 31-8-1955	1 ,,
Q.	Tea account book from 1-12-1950 to 18-10-1955	1 ,,
R.	Register of leave with wages from 1-1-1952 to 31-7-1955	1 ,,
S.	Leave books of individual workers (Series 48 in number)	48 ,,
T.	Factory Muster Book from 1-12-1953 to 26-8-1954	1 ,,

Workmen Witness.

P. T. John, Grahamsland Estate.

APPENDIX.

Exhibits on behalf of Management.

I. Discharge Order dated 5th May, 1954.

II. Confidential Report from the Assistant Manager of the Estate Mr. Lee to the General Manager about the work of John dated 6th April, 1954.

III. Confidential Report from the Manager Mr. Nicholson of the Estate dated 11th April, 1954 to the General Manager about Mr. John's work.

IV. Discharge notice dated 27th April, 1954.

V. Letter from the nurse, Medical Department to Doctor dated 3-5-1954.

VI. Letter dated 4th May, 1954 from the Chief Medical Officer to Mr. Nicholson, the Manager.

VII. Confidential Report from Estate Manager Mr. Nicholson to the General Manager K. D. H. P. dated 25th April, 1954.

VII. (a) Rolling Room Entries dated 13th April, 1954.

(b) Withering Room Record at 8-50 P. M. on 19-4-1954.

(c) Letter from John to the Estate Manager dated 20-4-1954.

(d) Letter from John to the Manager dated 21-1-1954.

(e) Do. do. do.

(f) Telegrame from Shri Mathew to John dated 21-4-1954.

(g) Telegrame from Shri Abraham to John dated 21-4-1954.

VIII. Confidential Report of Shri John by Manager Nicholson dated 4th December, 1953.

IX. Records of the proceedings of the enquiry held on 13th June, 1953.

X. Letter from the General Manager to John dated 17-6-1954.

XI. Confidential Report about John by Manager Mr. Nicholson dated 16th December, 1952.

(a) Charge sheet dated 10th June, 1953.

XII. Letter from General Manager, to the Honorary Secretary E. S. H. S. I. (High Range Branch) dated 28th April, 1950.

XIII. Letter from John to the General Manager dated 30th January, 1951.

XIV. Letter from the General Manager to John dated 12th February, 1951.

XV. Letter from General Manager to Manager, Grahamsland Estate dated 12th February, 1951.

XVI. Standing orders of the staff employees on estates.

Management Witness.

Mr. Nicholson, Manager, Grahamsland Estate.